Amendments to the Drawings

The attached sheet of drawings includes changes to Fig. 1. This sheet, which includes Figs. 1 and 2, replaces the original sheet including Figs. 1 and 2. In Fig. 1, elements 101-108 have been added, pointing out structure in the original drawing. No new matter has been entered.

Attachment: Replacement sheet

Annotated sheet showing changes

REMARKS/ARGUMENTS

This is in response to the Final Action dated February 25, 2008, and is accompanied by a Petition for Extension of Time for 3 months and a Request for Continued Examination.

A) Rejections under 35 U.S.C. §112

The objections in paragraphs 1, 2 and 3 of the Action have been overcome by revisions to the language used in the description and the claims to ensure consistency. Care has been taken to ensure that no additional matter has been introduced into the application and to ensure that the claims are fully supported.

Below is given a full explanation of all changes made. All page and line references concerning the description refer to the original PCT application as filed and published.

Support for the amendments to the description can be found in the passages on page 6, lines 29 to 35 and page 7, lines 1 to 13, and in the drawings.

In particular, on page 7, lines 9 to 12 refers to a peripheral ridge, and it is clear from figure 1 that the housing 5 (as originally referred to) carrying the solar panel 4 is mounted on such a ridge.

Terminology has been made consistent in the introduction, specific description and claims. For example, in the introduction on page 7 lines 9 to 13 it is stated that the solar panel may be arranged on a removable insert placed in the vessel. In the original description, on page 9 , line 14 and 15, the panel 4 is said to be provided on a "housing 5". It is clear that this "housing" is the insert referred to earlier. Accordingly the description has been made consistent and claim 1 now refers to the solar panel being on the insert. Similarly, on page 6, lines 31, 32 and 33 of the introduction it is stated that solar panel defines a volume of water above the panel and a volume of water below the

panel. With reference to the description on page 9, it is clear that it is the insert 5 carrying the solar panel 4 that provides this function, and this has now been clarified.

In the description of the illustrated embodiment, clearer wording has been used. Thus it is made clear that the pump is mounted to the lower side of the insert 5 and secured thereto.

On page 7, lines 5 to 8, it is stated that apertures through the panel or spaces between the panel and the wall of the vessel provide a return path for water to the panel. On page 9, the amended description now explains that the apertures 8 provide the return flow path.

No new subject matter has been added to the specification. The changes made are ones of terminology only for the purposes of clarity and consistency.

In the claims, all of the features are clearly supported by the original disclosure, and there is now consistent language used. All features referred to are illustrated in the original drawings and are now all referenced by number.

In claim 1, it is now made clear that the return path is defined by the insert. On page 7, lines 5 to 8, it is stated that apertures through the panel or spaces between the panel and the wall of the vessel. Thus it is clear that the return flow path is defined by the insert, to the extent that there are apertures in the insert or spaces between the insert and the vessel.

Claims 23 and 24 are supported by the original description on page 9 which refers to a bird bath including a dish.

New claim 25 corresponds to amended claim 1 but with some changes in terminology. The original specification, on page 7, lines 4 and 5, refers to the solar panel dividing the vessel into two chambers. Later it is stated that the panel could be provided on an insert. In the original description on page 9, it is stated that the panel is provided on a "housing". The language used in claim 23 covers these possibilities by using the generic terminology "solar panel assembly". In addition, the

claim refers to apertures defined by the insert which communicate the upper body of water with the lower body of water.

New claim 31 brings together the features of the invention specifically in the context of a bird bath.

B) 35 U.S.C. §103 Rejections

The Examiner's rejection in paragraphs 4 and 5 is that the claims, as best understood by the Examiner at that time, are unpatentable over Tomoyoshi in view of Lin. The Examiner states that Tomoyoshi teaches all of the limitations of the claims except for dividing the vessel into two chambers.

With the amendments now made to the description and claims, there should no longer be any difficulty in understanding the claims.

JP 8196966 of Tomoyoshi has been discussed previously. It is a floating water feature which will be used in a pond. It includes floats 16 so that it will float in the pond, and a large filter 10 which will of course be necessary in a pond.

Tomoyoshi does not disclose a vessel. There is a body of water, but nowhere is it disclosed that this is in a vessel. It is of course true that the water must be constrained somehow but Tomoyoshi does not disclose doing this by means of a vessel.

The water feature in Tomoyoshi does not separate anything - whether a vessel or a pond - into an upper and lower water containing portion, with a return path defined by the water feature from the upper to the lower portion. All that can be discerned from the description and drawings in Tomoyoshi is that the water feature is floating on water. The water extends for an indeterminate distance around the water feature. If the feature is floating in the middle of a pond, there is no way that the feature could be said to separate the body of water into upper and lower portions. Nowhere

is it suggested that in fact the water is bounded by walls sufficiently close to the water feature that the water might be considered as divided into upper and lower portions. The fact is that this is a floating feature intended to float freely on a body of water, and to the person skilled in the art it is clear that a floating feature would normally be used on a pond, for example. In any event, Tomoyoshi does not disclose or suggest anywhere a vessel divided into upper and lower portions.

The Examiner asserts that it would have been obvious to one having ordinary skill in the art to combine the teachings of '966 with a self-contained fountain having two chambers as taught by Lin. As an initial hurdle, the Examiner is required to articulate logical reasons to justify the combination of references in a § 103 rejection using sound factual underpinnings. The Examiner has not done this. The Examiner merely states in a conclusory manner that providing '966 device with the two chamber structure of Lin would "provide a way for recycling the flowing water and such modification is merely the use of known technique to improve a similar device." However, given the teachings of the '966 device, which does not remotely require recirculation of water, there would be no logical reason to look to Lin, at least because that "improvement" is not needed in '966.

There is, therefore, no properly articulated reason given to modify the '966 device with the two chambers of the Lin device. The Examiner's hindsight assertion that it would be common sense and within ordinary skill in the art to combine the '966 reference with Lin is therefore illogical, and lacks the requisite sound factual underpinnings necessary to establish *prima facie* obviousness. For that reason alone, the Examiner's rationale, asserting that a reason exists to combine the references, is clearly incorrect.

Floating freely in a body of water is an essential function of the water feature of '966 and it is inconceivable that a person skilled in the art would remove the floats, remove the filter, and locate the remainder of the device in a vessel so that it provides a static water feature such as a bird bath.

It would not just be necessary to remove the floats and filter but also to provide a return path for water, not something that is necessary for a feature floating freely in a pond.

Tomoyoshi '966 does not disclose or suggest the features claimed, and there is no logical reason for combining it with Lin. Indeed, there is every reason for not doing so.

If Lin is to be assessed in the context of the present invention, it must be looked at as a water feature in its own right.

Lin is a battery powered water feature, there being a battery 20 in a battery compartment 11. The aim of Lin is to provide a fountain with a moving float that provides a visual effect. There are two water compartments, a lower container 10 and an upper tube 40. Water partially fills the lower container. A pump mounted in the lower container is powered by the battery and feeds the tube 40. The pump is only activated intermittently, under the control of a micro chip 21 (column 2, lines 24 and 25). When the pump is activated, a float is pushed up tube 40 and when it reaches the top petals 51, the pedals open out. Water passes out of the opening 42 at the top of tube 40. This water passes back down into the container 41. The description in Lin (column 2, lines 35 to 39) does not explain properly how this happens, although Figure 1 appears to show apertures in a flange attached to the tube 40. A funnel surrounding the base of the tube 40 catches water issuing from opening 42, which drops down into the container 10.

When the pump is not operating, the position is as in Figure 2. Water partially fills the container 10, and some water is contained within the tube 40. There is no water visible outside the water feature.

There is nowhere suitable in Lin to position a solar panel. The exposed areas are small. The annular top of the tube 40 gets partially covered by the petals 51 at intervals. The annular flange around the base of tube 40 is shaded by the tube 40, is also of limited area, and is provided with

many apertures as can be seen in Figure 1. The person skilled in the art, looking at Lin, would not consider removing the battery and replacing it by a solar panel built into the water feature. The person skilled in the art would appreciate the need for sufficient energy to urge the float up the tube 40, and the need for the feature to work at time of day when the sun is not directly overhead. A solar cell in the shade of the tube 40 will not function efficiently.

In Lin, there are two bodies of water - one in the container 10 and one in the tube 2; see Figures 2 and 3. There is a base at the bottom of tube 40. However, this base cannot possibly be a solar panel assembly because it is beneath the float 50 and at the bottom of tube 40, and will receive no sunlight. No water can be retained in the top part of the container 10, above the circular flange. That top part does not contain water and does not serve as a dish. It is simply a funnel to collect water issuing from the top of tube 40, which passes through the apertures (Figure 1) into the base of the container 10. Figure 2 shows the water feature when the pump is inoperative. There is no water held around the base of tube 40 and it would be a physical impossibility - any water would drop into the main part of the container 10 below. When the pump is operating, the situation is as shown in Figure 3. There is still no water held around the base of tube 10. Water is funneled straight down to the main part of the container 10.

Thus, in Lin there is no solar panel arranged to provide electrical power to said water pump, and no suitable place for such a panel if it is to work efficiently. The places where solar cells could be positioned are not within a water vessel so as to be beneath the water level in the vessel. They are at the top of the tube 40 and around the base of the tube 40, nether being places where a body of water is held. There is no insert carrying a solar panel, and a solar panel could not separate the vessel into an upper water containing portion and a lower water portion. The separation between the

two bodies of water (in the container 10 and in the tube 40) is such that a solar panel would receive no light.

Thus, Lin does not provide features recited in independent claims 1, 25 and 31, and is unsuitable for adaptation to provide them. If attempted, clearly an inoperable device would be the result.

As regards new dependent claims 23, 24, 29 and 30. Lin does not provide a dish. The funnel around the base of tube 40 does not hold water in the manner of a dish, but merely funnels it into the container 10 below. As such, the water feature of Lin is not a bird bath. There is no shallow dish containing water in which birds can bathe. Most of the area is taken up by central tube 40 with the feature of the opening and closing petals 51. The water feature of Lin is neither intended for use as nor suitable for use as a bird bath.

Looking at new independent claim 31, Lin does not provide a water-containing bird bath dish having a base, with a solar panel assembly forming the base of the dish, the dish and a water basin beneath the dish constituting a vessel filled with water, divided into two by the solar panel assembly.

In summary, Lin is unsuitable for powering by an integrally mounted solar panel, and is unsuitable for use as a bird bath because there is no standing body of water accessible to a bird. The water is held in the container 10 and in the tube 40, nether of which is accessible to a bird. The person skilled in the art will know from Tomoyoshi that water features can be powered by solar panels but would appreciate that Lin is not suitable for adaptation in that manner. The substantial tube 40 containing the float and the petals is an essential part of Lin, and precludes adaptation of the water feature to a solar powered bird bath.

The person skilled in the art would not think of using Tomoyoshi with features from Lin. The battery chamber 11 and battery 20 would have to be removed. Tube 40, float 50 and petals 52,

which are essential to Lin, would also have to be removed. Essentially there would be left an empty bowl, in which the water feature of Tomoyoshi could float if the bowl is large enough. This does not provide or suggest the claimed features of the invention.

As demonstrated above, since neither of the references are suitably constructed to operate in a small container such as a bird bath, there is a lack of suggestion or motivation to modify either one of the references to supply the specific elements and adaptations provided by the claimed invention. Therefore, the references do no render the presently claimed invention obvious.

Reconsideration is requested.

Respectfully submitted,

Date: August 25, 2008

/Steven B. Courtright/

Steven B. Courtright
Patent Agent
Reg. No. 40,966

McDonnell, Boehnen, Hulbert & Berghoff LLP
300 S. Wacker Drive
Chicago, IL 60606
(312) 913-0001

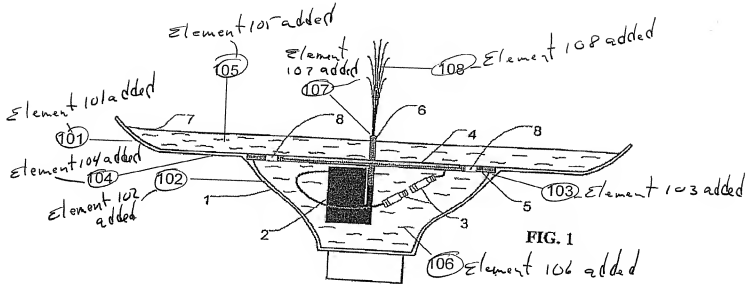
Element 101 added
Element 107 added
Element 108 added
Element 101 added
Element 104 added
Element 102 added
Element 103 added
Element 106 added
105
107
108
101
104
102
103
106
1
2
3
4
5
6
7
8

FIG. 1

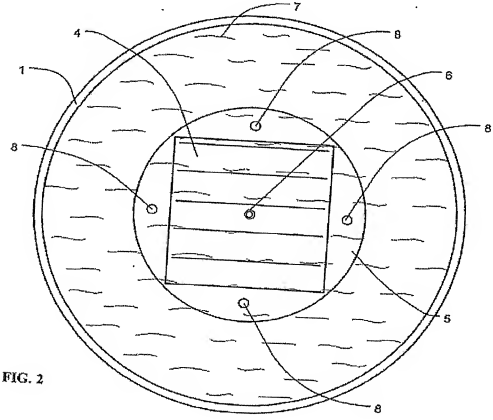
1
2
3
4
5
6
7
8

FIG. 2